

DATE: October 30, 2006

TO: Members of the Board Committee on Operations

FROM: Marie M. Moffat, General Counsel
Lawrence C. Yee, Chief Assistant General Counsel
Heather A. Irwin, Assistant General Counsel

SUBJECT: Board Polls and Distribution of Agenda Materials By Email and Other Electronic Means

EXECUTIVE SUMMARY

The Rules Governing Open Meetings, Closed Sessions and Records of the Board of Governors ("Open/Closed Rules") generally require all Board and Board Committee meetings to be noticed at least 10 days prior to the date scheduled for the meeting. The Open/Closed Rules provide that in addition to posting on the Internet, notice must be mailed to any person who has filed a written request. This item requests that the Board Committee on Operations authorize the publication for a 90-day public comment period proposed revisions to the Open/Closed Rules to allow the Office of the Secretary to email notices and agendas unless the requestor specifically requests that the notice be mailed.

The Open/Closed Rules and the Rules and Regulations of the State Bar of California ("Rules and Regulations") contain provisions that allow for emergency meetings of the Board of Governors in appropriate circumstances, including action by fax poll. Email and other changes in electronic communications since enactment of this provision now provide other means for polling the board. This item would also authorize a 90-day public comment period the publication of proposed revisions to the Open/Closed Rules and the Rules and Regulations to permit electronic polling of the board using email or other appropriate electronic means in addition to faxes.

I. PROPOSED REVISIONS

A. Emergency Board Polls

Article 2, section 2 of the Open/Closed Rules requires all Board and Board Committee meetings to be noticed at least 10 days prior to the date scheduled for the meeting. Article 4, section 1 of the Open/Closed Rules prohibit items from being added to an agenda or action being taken on any item that does not comply with the 10-day notice requirement, except in emergencies defined in Article 4. Similarly, section 3 of article IV of the Rules and Regulations provides an exception to the 10-day notice requirement for emergency meetings. Both the Open/Closed Rules and the Rules and Regulations provide that an emergency meeting may be called when a combination of circumstances or the resulting state requires immediate action.

Both the Open/Closed Rules and the Rules and Regulations specify that the Board may take emergency action by fax poll in the following limited circumstance: when the subject matter requires no discussion or deliberation and where the same action taken at a regular meeting would appear on the consent agenda. The Board has traditionally used fax polls in emergency circumstances, but with the rise in email communication, it is now more expeditious for the Board to be polled by email. Staff proposes amending the provisions providing for polling by facsimile to include email or other appropriate electronic communications.

This item authorizes for public comment proposed amendments to section 3 of article IV of the Rules and Regulations and to section 2 of article 4 of the Open/Closed Rules to permit the polling of the Board or a Board Committee by email poll or other appropriate electronic communication. A redlined version of the existing rules are attached as Exhibit 1 for your review.

B. Distribution of Agenda Materials

Article 2, section 2 of the Open/Closed Rules provides that the Secretary of the State Bar must mail notice of every meeting of the board or board committee to any person who has filed a written request for notice. The notice, which "includes or incorporates" the meeting agenda, must be mailed at least ten days before the date set for the regular or any special meeting. With the Internet, it is more expeditious and economical to provide notice by electronic means to persons who have made a request. Staff recommends continuing to allow the public to receive paper copies by mail upon request, as both the Brown Act and the Bagley-Keene Act allow for mailed copies of

agendas and agenda materials.¹ Cal. Gov't Code § 6253; 11125.1; 54954.1. Therefore, staff proposes that the Board consider amending the Open/Closed Rules to provide that notice may be sent by email or other electronic means, unless the person making the written request expressly requests notice by mail. Staff also recommends clarifying that the request for notice of meetings must be filed annually, which is consistent with Article 2, Section 2(c) of the Open/Closed Rules, the Brown Act and the Bagley-Keene Act.

This item authorizes for public comment proposed amendments to section 2 of article 2 of the Open/Closed Rules to allow the Secretary to provide notice of board or board committee meetings by email or by other appropriate electronic communication unless a party has requested notice by mail.

II. AUTHORIZATION TO RELEASE FOR PUBLIC COMMENT

The State Bar's Procedure for Adoption, Amendment or Repeal of State Bar Regulations ("Public Comment Rules") require changes to the State Bar rules or regulations to be circulated for public comment. Section 4 of the Public Comment Rules provides a standard 90-day public comment period. In accordance with these provisions of the Public Comment Rules, it is requested that the Committee authorize release of the proposed rule changes for a 90-day public comment period.

III. RECOMMENDATIONS/RESOLUTIONS

If you concur with the recommendations above, it is recommended that you adopt the following resolutions:

RESOLVED, that pursuant to the Public Comment Rules, sections 3 through 6, the Board Operations Committee authorizes staff to make the proposed revisions to Article 2 of the Rules Governing Open Meetings, Closed Sessions and Records of the Board of Governors and Article IV of the Rules and Regulations of the State Bar of California, in the form attached hereto, available for a public comment period of 90 days, *and it is*

FURTHER RESOLVED, that this authorization for public comment circulation shall not be construed as a statement of approval of the proposed revisions.

¹ The Brown Act, Government Code section 54950 et seq., governs the meetings of local governmental bodies. The Bagley-Keene Act, Government Code section 11120 et seq., governs the meetings of state agencies

EXHIBIT 1

RULES AND REGULATIONS OF THE STATE BAR OF CALIFORNIA

Article IV - Meetings of the Board of Governors

Section 3 - Emergency Meetings

An emergency meeting or emergency closed session may be called, or the Board or a Board committee may take action voting by fax poll, email, or other electronic means, should an emergency justify such an action. For the purposes of this section Aemergency@ means a combination of circumstances or the resulting state that calls for immediate action before the next regularly noticed meeting or closed session. Action by ~~fax poll~~ a vote of the Board or Board committee by fax poll, email, or other electronic means is appropriate where the subject matter requires no discussion or deliberation and where the same action taken at a regular Board or Board Committee meeting would appear on the consent agenda. A statement of any action taken at an unnoticed meeting or any matter considered at an unnoticed closed session shall be included in the notice required by subdivision (a) of section 2, article 2 of the Rules Governing Open Meetings, Closed Sessions and Records of the Board of Governors, for the next succeeding properly noticed meeting.

RULES GOVERNING OPEN MEETINGS, CLOSED SESSIONS AND RECORDS OF THE BOARD OF GOVERNORS

Article 2 – Open Meetings

Section 2 –Notice of Meetings; Inclusion of Agenda; Time; Request for Notice and Renewal; Annual Charge for Sending

- (a) The secretary shall give notice by email or other electronic means of every regular meeting and any special meeting of the board or board committee which is called, at least ten days prior to the date set for the meeting, to any person who has filed an annual written request for such notice with the secretary. The secretary shall give notice by United States mail only to those who specify in their written request that they wish to receive mailed notice. The secretary shall also make notice available on the Internet. The secretary shall provide notice to each board member and shall make notice available on the Internet at least 48 hours in advance of any special meeting. Any emailed or mailed notice shall include or incorporate the specific agenda for the meeting and shall be sent at least ten days prior to the date set for the meeting to which it applies, except that the secretary may give such notice as the secretary deems practical of meetings pursuant to section 2 of article 4 of these rules, called less than ten days prior to the date set for the meeting. The

agenda need not include a list of any witnesses expected to appear at the meeting, but shall state the specific items of business to be transacted or discussed.

Article 4 - Agendas, Emergency Items and Meetings

Section 2 - Late Added Items; Unnoticed Meetings

The presiding officer may add items to be transacted to the agenda of an open meeting or closed session, or schedule unnoticed meetings or closed sessions, or arrange for the board or a board committee to take action voting by fax poll, **email, or other electronic means**, should an emergency justify such an action. For purposes of this section Aemergency@ means a combination of circumstances or the resulting state that calls for immediate action before the next regularly noticed meeting or closed session. Action by ~~fax poll~~ **a vote of the Board or Board committee by fax poll, email, or other electronic means** is appropriate where the subject matter requires no discussion or deliberation and where the same action taken at a regular Board or Board Committee meeting would appear on the consent agenda. A statement of any action taken at an unnoticed meeting or any matter considered at an unnoticed closed session shall be included in the notice required by subdivision (a) of section 2, article 2 of the rules, for the next succeeding properly noticed meeting. The subject matter of any item added to the agenda of a properly noticed closed session shall be stated by the presiding officer prior to commencement of the closed session. Nothing in this section shall be construed to require or authorize the disclosure of names or other information which would constitute an invasion of privacy or otherwise unnecessarily divulge particular facts concerning the closed session.